

# *Exhibit A*

## **THE HONORABLE JUDGE BENJAMIN H. SETTLE**

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

ALLISON N. RANDAL, an individual,

NO. 3:18-cv-6002 BHS

Plaintiff,

## **PLAINTIFF'S PRETRIAL STATEMENT**

TRIAL DATE: OCTOBER 20, 2020

XPO LOGISTICS, INC., a Delaware corporation conducting business in the State of Washington; MICHAEL D. MICHELENA, an individual employed by XPO LOGISTICS, INC.

## Defendants.

## I. FEDERAL JURISDICTION

17 Pursuant to 28 U.S.C. §1332(a)(1), this Court has diversity jurisdiction because  
18 Plaintiff does not share a state of citizenship with the Defendants. This Court also has  
19 jurisdiction based on the amount in controversy, which exceeds \$75,000. Venue is proper in  
20 the Western District of Washington, pursuant to 28 U.S.C. §1391(b)(2) and (c)(2), because a  
21 substantial part of the events or omission giving rise to the claims herein occurred in Lewis  
22 County and Defendants are subject to this court's personal jurisdiction with respect to the  
23 civil action in question.

## **II. CLAIMS AND DEFENSES**

Plaintiff Allison Randal pursues personal injury claims against Defendants for her ongoing serious and permanent injuries, primarily to her left heel. Plaintiff is seeking non-economic and economic damages for her injuries and any other damages allowed by the Court, including emotional distress, past and future loss of earning capacity, life care plan costs, and other damages. Defendants have admitted liability for the subject crash. Defendants further admit causing the injuries and damages proximately caused by the subject crash. Defendants contest the nature and extent of Plaintiff's injuries.

### **III. STATEMENT OF ADMITTED FACTS**

The following facts are admitted by the parties:

1. Plaintiff is female, 45 years old, and currently resides in New York.

2. XPO Logistics, Inc., is a corporation headquartered in Delaware that does business in Washington state and throughout the country.

3. On or about December 23, 2015, at approximately 10:25 a.m., Plaintiff was driving southbound I-5, near mile marker 84, in Centralia, Lewis County, Washington.

4. Defendant Michelena was driving a tractor trailer in the same lane, two vehicles behind Plaintiff.

5. Defendant Michelena's truck rear ended a truck behind Plaintiff's vehicle, thereby causing the subject collision.

6. Defendant Michelena was working on behalf of XPO Logistics, Inc. at the time of the crash.

7. Defendants admit liability for the subject crash.

1       8. Defendants admit causing the injuries and damages proximately caused by the  
2 subject crash.

3       9. Defendants contest the nature and extent of Plaintiff's injuries.

4       10. Defendants have asserted no affirmative defenses.

5       11. Defendants admit no act of Plaintiff contributed to causing the wreck.

#### 6                  **IV. ISSUES OF LAW AND FACT**

7       The parties submit the following issues of fact:

8       a. What amount of non-economic damages is Plaintiff entitled to due to her crash-related  
9                   injuries?

10      b. What about of economic damages is Plaintiff entitled to due to her crash-related  
11                   injuries?

12      No issues of law are before the Court.

#### 13                  **V. WITNESSES**

##### 14      **A. On behalf of Plaintiff**

###### 15      **Lay Witnesses**

16      1. **Allison N. Randal** (will testify live), c/o Washington Injury Lawyers, PLLC. Ms.  
17      Randal is the Plaintiff and will testify regarding the subject collision, her injuries, and  
18      damages, including but not limited to damage to her professional career, her relationships, and  
19      her ongoing physical and emotional pain and suffering.

20      2. **Michael D. Michelena** (deposition testimony may be submitted in lieu of live  
21      testimony), c/o Merrick, Hofstedt & Lindsey, P.S., and Lewis Brisbois Bisgaard & Smith,  
22      LLP. Mr. Michelena is the Defendant Driver and was working on behalf of Defendant XPO

1 Logistics, Inc. at the time of the subject crash. He may be called to testify regarding the  
2 subject collision and the surrounding circumstances.

3       **3. Martin “Max” Randal** (will testify live or via live video), 10609 171st Ct NE,  
4 Redmond, WA 98052. Mr. Martin “Max” Randal is Plaintiff’s son. He was Ms. Randal’s  
5 front-seat passenger in the subject collision. He may be called to testify regarding the subject  
6 crash, Plaintiff’s physical and emotional condition before the subject crash, Plaintiff’s injuries  
7 and damages arising from the subject crash, as well as how the injuries and damages continue  
8 to affect her life and their relationship.

9       **4. Jeffrey Martin** (will testify live), Seattle, Washington. Mr. Jeffrey Martin is  
10 Plaintiff’s brother. He may be called to testify regarding Plaintiff’s physical and emotional  
11 condition before the subject crash, Plaintiff’s injuries and damages arising from the subject  
12 crash, as well as how the injuries and damages continue to affect her life.

13       **5. Stefano Rivera** (will testify live or via live video), 40 Alta St., Apt. 3, San Francisco,  
14 CA 94133-3527. Mr. Stefano Rivera was Plaintiff’s boyfriend at the time of the subject crash.  
15 He may be called to testify regarding his Plaintiff’s physical and emotional condition before  
16 the subject crash, Plaintiff’s injuries and damages arising from the subject crash, how their  
17 relationship was affected due to the crash, how Plaintiff’s injuries and damages arising from  
18 the subject crash affected her professional career, as well as how the injuries and damages  
19 continue to affect her life.

20       **6. Matthew Treinish** (will testify live or via live video), 14 Dartantra Drive, Hopewell  
21 Junction, New York 12533. Mr. Matthew Treinish is Plaintiff’s boyfriend and currently  
22 resides with her. He may be called to testify regarding his knowledge of Plaintiff’s injuries  
23 and damages, as well as how the injuries and damages affect her life.

1       6.     **Michael E. Brage, MD** (will testify by perpetuation deposition), Orthopedic Foot and  
2 Ankle Surgeon, Sigvard T. Hansen Foot and Ankle Institute, Harborview Medical Center, 325  
3 Ninth Avenue, Box 359798, Seattle, Washington 98104-2499. Dr. Brage treated Plaintiff  
4 following her subject collision at Harborview Medical Center and performed two surgeries on  
5 her left calcaneus and has treated her for ongoing pain complaints. Dr. Brage will testify to  
6 Plaintiff's injuries and their permanency, the past treatment he rendered, and provide opinions  
7 on future treatment and prognosis, on a more probable than not basis.

8 **Expert Witnesses**

9       1.     **Michael E. Brage, MD** (will testify by perpetuation deposition), Orthopedic Foot and  
10 Ankle Surgeon, Sigvard T. Hansen Foot and Ankle Institute, Harborview Medical Center, 325  
11 Ninth Avenue, Box 359798, Seattle, Washington 98104-2499, Phone: (206) 744-5707. Dr.  
12 Brage treated Plaintiff following her subject collision at Harborview Medical Center and  
13 performed two surgeries on her left calcaneus and has treated her for ongoing pain  
14 complaints. Dr. Brage will testify to Plaintiff's injuries and their permanency, the past  
15 treatment he rendered, and provide opinions on future treatment and prognosis, on a more  
16 probable than not basis. Dr. Brage is Plaintiff's treating provider, but is a hybrid expert who is  
17 also providing opinions on future care and treatment on a more probable than not basis. Dr.  
18 Brage, therefore, is also being designated as an expert witness, pursuant to FRCP 26(2)(B).

19       2.     **Gary Schuster, MD** (will testify live), Broadway Sports & Internal Medicine, 1600  
20 116th Avenue Northeast, Suite 202, Bellevue, WA 98004. Dr. Schuster will testify to  
21 Plaintiff's injuries and treatment arising from the subject collision, permanency of injuries,  
22 future treatment and prognosis, and Plaintiff's life care plan on a more probable than not  
23 basis.

1       3.     **John R. Cary, MA, CRC, CDMS, VRC** (will testify live), OSC Vocational Systems,  
2 Inc., 601 SW 152nd Street, Burien, WA 98166. Mr. Cary will testify to his opinions regarding  
3 Plaintiff's life care plan and past and future reduced earning capacity on a more probable than  
4 not basis.

5       4.     **William Brandt** (will testify live), Brandt Forensic Economics, PO Box 10187,  
6 Bainbridge Island, WA 98110. Mr. Brandt will testify to his opinions regarding Plaintiff's  
7 economic losses in present-day value, specifically Plaintiff's life care plan, future medical  
8 costs and treatment, and past and future reduced earning capacity on a more probable than not  
9 basis.

## **VI. TRIAL EXHIBITS**

#### **A. Plaintiff's Exhibits.**

Plaintiff reserves the right to rely upon any admitted exhibits of Defendants at trial.

13 Plaintiff has no exhibits to produce at this time and reserves the right to admit exhibits at trial.

## **VII. DEPOSITION TRANSCRIPTS**

## A. Plaintiff's Deposition Transcripts

<b>WITNESS</b>	<b>PAGES</b>	<b>DATE</b>
Michael D. Michelena	TBD	January 21, 2020

Dated this 28<sup>th</sup> day of August, 2020.

# **WASHINGTON INJURY LAWYERS, PLLC**

/s/ ***Young-Ji Ham***  
By: \_\_\_\_\_

1 Address:  
2 Washington Injury Lawyers, PLLC  
3 1001 Fourth Avenue, Suite 3200  
4 Seattle, WA 98154  
5 Phone: (425) 312-3057  
6 Fax: (206) 866-0208  
7 Email: jenna@washinjurylaw.com  
8 Email: youngji@washinjurylaw.com

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## **DECLARATION OF SERVICE**

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now, and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date set forth below, I caused to be served in the manner indicated a copy of the foregoing **PLAINTIFF'S PRETRIAL STATEMENT** to the parties identified below.

<p>Thomas J. Collins, WSBA # 2157  Peter Nierman, WSBA # 44636  Christopher A. Campbell, WSBA # 50959  <b>MERRICK, HOFSTEDT &amp; LINDSEY, P.S.</b>  3101 Western Avenue, Suite 200  Seattle, WA 98121  Phone: (206) 682-0610  E-mails: tcollins@mhlseattle.com; Pnierman@mhlseattle.com;  ccampbell@mhlseattle.com; mlynge@mhlseattle.com;  <i>Counsel for Defendant's XPO LOGISTICS, INC., and</i>  <b>MICHAEL D. MICHELENA</b></p>		(x) Via E-mail Service
<p>Heather M. Jensen, WSBA # 29635  <b>Lewis Brisbois Bisgaard &amp; Smith, LLP</b>  1111 Third Avenue, Suite 2700  Seattle, WA 98101  Phone: (206) 436-2020  E-mail: Heather.Jensen@lewisbrisbois.com;  Logan.Platvoet@lewisbrisbois.com;  <i>Counsel for Defendant's XPO LOGISTICS, INC., and</i>  <b>MICHAEL D. MICHELENA</b></p>		(x) Via E-mail Service
<p>Shawn A. Toliver, CABA # 148349  <b>Lewis Brisbois Bisgaard &amp; Smith, LLP</b>  2185 N. California Boulevard, Suite 300  Walnut Creek, CA 94596  Phone: (925) 357-3456  E-mail: Shawn.Toliver@lewisbrisbois.com;  Connie.Costanza@lewisbrisbois.com;  <i>Counsel for Defendant's XPO LOGISTICS, INC., and</i>  <b>MICHAEL D. MICHELENA</b></p>		(x) Via E-mail Service

1 I declare under penalty of perjury under the laws of the State of Washington that the  
2 foregoing is true and correct.

3 EXECUTED this 28<sup>th</sup> day of August, 2020, at Sequim, Washington.  
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5 */s/ Michael Coonelly*  
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7 Michael Coonelly  
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Paralegal to Young-Ji Ham

# *Exhibit B*

## **The Honorable Judge Benjamin H. Settle**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ALLISON N. RANDAL, an individual, ) NO. 3:18-cv-6002 BHS  
Plaintiff, ) [PROPOSED]  
 ) PRETRIAL ORDER

XPO LOGISTICS, INC., a Delaware )  
corporation conducting business in the State of )  
Washington; MICHAEL D. MICHELENA, an )  
individual employed by XPO LOGISTICS, )  
INC.; TILLAMOOK COUNTY CREAMERY )  
ASSOCIATION, an Oregon corporation )  
conducting business in the State of )  
Washington; RAY A. NAEGELI, an individual )  
employed by TILLAMOOK COUNTY )  
CREAMERY ASSOCIATION; J. DOE )  
CORPORATIONS AND/OR ENTITIES 1-5; )  
and DOE 1-5, individuals )

## Defendants.

## **JURISDICTION**

Jurisdiction is vested in this court by virtue of: Pursuant to 28 U.S.C. §1332(a)(1), this Court has diversity jurisdiction because Plaintiff does not share a state of citizenship with the Defendants. This Court also has jurisdiction based on the amount in controversy, which exceeds \$75,000. Venue is proper in the Western District of Washington, pursuant to 28 U.S.C. §1391(b)(2) and (c)(2), because a substantial part of the events or omission giving rise to the claims herein occurred in Lewis County and Defendants are subject to this Court's personal jurisdiction.

with respect to the civil action in question.

## **CLAIMS AND DEFENSES**

The Plaintiff will pursue at trial the following claims: Personal injury claims against Defendants for her ongoing injuries, primarily to her left heel. Plaintiff is seeking non-economic and economic damages for her injuries, including emotional distress, past and future loss of earning capacity, life care plan costs, and future medical expenses and treatment. Defendants have admitted liability for the subject crash. Defendants further admit causing the injuries and damages proximately caused by the subject crash.

Defendants will pursue the following defenses: Defendants contest the nature and extent of Plaintiff's injuries and damages.<sup>1</sup> Defendants also assert that Plaintiff failed to mitigate her alleged economic damages for lost wages and loss of earning capacity.

## ADMITTED FACTS

The following facts are admitted by the parties:

1. Plaintiff is female, 45 years old, and currently resides in New York.
  2. XPO Logistics, Inc., is a corporation headquartered in Delaware that does business in Washington state and throughout the United States.
    3. On or about December 23, 2015, at approximately 10:25 a.m., Plaintiff was driving southbound on I-5, near mile marker 84, in Centralia Lewis County, Washington.
    4. Defendant Michael Michelena (“Michelena”) was driving a tractor trailer in the same lane, two vehicles behind Plaintiff.
    5. Defendant Michelena’s truck rear-ended a truck behind Plaintiff’s vehicle, thereby causing the subject collision.

6. Defendant Michelena was working on behalf of XPO Logistics, Inc. at the time of the crash.

7. Defendants admit liability for the subject crash.

8. Defendants admit causing the injuries and damages proximately caused by the subject crash.

9. Defendants contest the nature and extent of Plaintiff's injuries and damages.

10. Defendants have asserted no affirmative defenses. (Defendants object to this “fact.”)

## **ISSUES OF LAW AND FACT (Bench Trial)**

A. Plaintiff proposes the following issues of fact:

1       What amount of non-economic damages is Plaintiff entitled to due to her crash-related injuries?

2. What amount of economic damages is Plaintiff entitled to due to her crash-related injuries?

Plaintiff states that there are no issues of law before the Court. (Defendants dispute this statement as Defendants' motions in limine have been denied, without prejudice to Defendants' renewing them at trial.)

B. Defendants propose the following statement of issues of fact:

a. Is the future medical treatment proposed for Plaintiff's left heel injury a medical necessity?

b. What is the amount of reasonable non-economic damages to which Plaintiff is entitled, if any?

c. What is the extent of Plaintiff's past lost wage claim and whether Plaintiff will lose any future income because of this injury?

d. What is the extent of Plaintiff's lost earning capacity because of this injury?

Defendants seek to have the following issues of law adjudicated by the Court:

1. Defendants' motions in limine were preliminarily denied by the Court without prejudice to Defendants renewing them at time of trial. Defendants are not waiving their right to reassert their motions in limine.

## **EXPERT WITNESSES**

(a) Defendants request, pursuant to LCR 43(j), that Plaintiff be limited to one medical expert witness, either Dr. Michael Brage, or Dr. Gary Schuster, to testify regarding Plaintiff's injuries and treatment arising from the subject accident, permanency of her injuries, and her future treatment and prognosis.

(b) The name(s) and addresses of the expert witness(es) to be used by each party at the trial and the issue upon which each will testify is:

(1) On behalf of plaintiff:

(i) Michael E. Brage, MD (will testify via perpetuation deposition), Orthopedic Foot and Ankle Surgeon, Sigvard T. Hansen Foot and Ankle Institute, Harborview Medical Center, 325 Ninth Avenue, Box 359798, Seattle, Washington 98104-2499, Phone: (206) 744-5707. Dr. Brage treated Plaintiff following her subject collision at Harborview Medical Center and performed two surgeries on her left calcaneus and has treated her for ongoing pain complaints. Dr. Brage will testify to Plaintiff's injuries and their permanency, the past treatment he rendered, and provide opinions on future treatment and prognosis, on a more probable than not basis.

1                         (ii)     Gary Schuster, MD (will testify via Zoom, unless the Court orders otherwise, in  
 2 light of COVID-19 and Emergency Orders in effect at the time of trial), Broadway Sports &  
 3 Internal Medicine, 1600 116th Avenue Northeast, Suite 202, Bellevue, WA 98004. Dr. Schuster  
 4 is a forensic medical expert and will testify to Plaintiff's injuries and treatment (other than provided  
 5 by Dr. Brage) arising from the subject collision, permanency of injuries, future treatment and  
 6 prognosis, permanent physical restrictions, the effect of injuries on ability to work, and Plaintiff's  
 7 life care plan (including future treatment and prognosis) on a more probable than not basis.  
 8 (Defendants object to Plaintiff's attempts to revise Dr. Schuster's disclosure from that contained  
 9 in Plaintiff's Pretrial Statement served August 28, 2020 which stated: "Dr. Schuster will testify to  
 10 Plaintiff's injuries and treatment arising from the subject collision, permanency of injuries, future  
 11 treatment and prognosis and Plaintiff's life care plan on a more probable than not basis."

14  
 15                         (iii)    John R. Cary, MA, CRC, CDMS, VRC (will testify via Zoom, unless the Court  
 16 orders otherwise, in light of COVID-19 and Emergency Orders in effect at the time of trial), OSC  
 17 Vocational Systems, Inc., 601 SW 152nd Street, Burien, WA 98166. Mr. Cary will testify to his  
 18 opinions regarding Plaintiff's life care plan and past and future reduced earning capacity on a more  
 19 probable than not basis.

20                         (iv)     William Brandt (will testify via Zoom, unless the Court orders otherwise, in light  
 21 of COVID-19 and Emergency Orders in effect at the time of trial), Brandt Forensic Economics,  
 22 PO Box 10187, Bainbridge Island, WA 98110. Mr. Brandt will testify to his opinions regarding  
 23 Plaintiff's economic losses in present-day value, specifically Plaintiff's life care plan, future  
 24 medical costs and treatment, and past and future reduced earning capacity, on a more probable  
 25  
 26

1 than not basis.

2 (2) On behalf of defendants:

3 (i) Defendants ~~will not be calling any of their own~~have not disclosed any  
4 expert witnesses. Defendants are not waiving their right to re-assert the objections contained in  
5 their motions in limine regarding Plaintiff's expert witnesses, which motions the Court previously  
6 denied, but without prejudice to Defendants' right to make the same objections contained in the  
7 motions in limine at trial.

8

9 **OTHER WITNESSES**

10 The names and addresses of witnesses, other than experts, to be used by each party  
11 at the time of trial and the general nature of the testimony of each are:

12 (a) On behalf of plaintiff:

13 (i) Allison N. Randal (will testify via Zoom, unless the Court orders otherwise, in light  
14 of COVID-19 and Emergency Orders in effect at the time of trial), c/o Washington Injury Lawyers,  
15 PLLC. Ms. Randal is the Plaintiff and will testify regarding the subject collision, her injuries, and  
16 damages, including but not limited to damage to her professional career, her relationships, and her  
17 ongoing physical and emotional pain and suffering.

18 (ii) Michael D. Michelena (via video deposition testimony in lieu of live testimony),  
19 c/o Merrick, Hofstedt & Lindsey, P.S., and Lewis Brisbois Bisgaard & Smith, LLP. Mr. Michelena  
20 is the Defendant Driver and was working on behalf of Defendant XPO Logistics, Inc. at the time  
21 of the subject crash. His deposition transcript will be admitted in lieu of live testimony, which will  
22 discuss the subject collision and the surrounding circumstances.

23 (iii) Martin "Max" Randal (will testify via Zoom, unless the Court orders otherwise, in  
24

1 light of COVID-19 and Emergency Orders in effect at the time of trial), 10609 171st Ct NE,  
2 Redmond, WA 98052. Mr. Martin “Max” Randal is Plaintiff’s son. He was the front-seat passenger  
3 in the subject collision. He may be called to testify regarding the subject crash, Plaintiff’s physical  
4 and emotional condition before the subject crash, Plaintiff’s injuries and damages arising from the  
5 subject crash, as well as how the injuries and damages continue to affect her life and their  
6 relationship.

8 (iv) Jeffrey Martin (will testify via Zoom, unless the Court orders otherwise, in light of  
9 COVID-19 and Emergency Orders in effect at the time of trial), 2208 16<sup>th</sup> Ave S, Seattle,  
10 Washington. Mr. Jeffrey Martin is Plaintiff’s brother. He may be called to testify regarding  
11 Plaintiff’s physical and emotional condition before the subject crash, Plaintiff’s injuries and  
12 damages arising from the subject crash, as well as how the injuries and damages continue to affect  
13 her life.

15 (v) Stefano Rivera (will testify via Zoom, unless the Court orders otherwise, in light of  
16 COVID-19 and Emergency Orders in effect at the time of trial), 40 Alta St., Apt. 3, San Francisco,  
17 CA 94133-3527. Mr. Stefano Rivera was Plaintiff’s boyfriend at the time of the subject crash. He  
18 may be called to testify regarding his Plaintiff’s physical and emotional condition before the  
19 subject crash, Plaintiff’s injuries and damages arising from the subject crash, and how their  
20 relationship was affected due to the crash.

22 (vi) Matthew Treinish (will testify via Zoom, unless the Court orders otherwise, in light  
23 of COVID-19 and Emergency Orders in effect at the time of trial), 14 Dartantra Drive, Hopewell  
24 Junction, New York 12533. Mr. Matthew Treinish is Plaintiff’s boyfriend and currently resides  
25 with her. He may be called to testify regarding his knowledge of Plaintiff’s injuries and damages,

as well as how the injuries and damages affect her life.

(vii) Michael E. Brage, MD (will testify by perpetuation deposition), Orthopedic Foot and Ankle Surgeon, Sigvard T. Hansen Foot and Ankle Institute, Harborview Medical Center, 325 Ninth Avenue, Box 359798, Seattle, Washington 98104-2499. Dr. Brage treated Plaintiff following her subject collision at Harborview Medical Center and performed two surgeries on her left calcaneus and has treated her for ongoing pain complaints. Dr. Brage will testify to Plaintiff's injuries and their permanency, the past treatment he rendered, and provide opinions on future treatment and prognosis, on a more probable than not basis.

(b) On behalf of Defendants:

(i) Defendants will not be calling any of their own lay witnesses. Defendants are not waiving their right to re-assert the objections contained in their motions in limine regarding plaintiff's lay witnesses, which motions the Court previously denied, but without prejudice to Defendants' right to make the same objections contained in the motions in limine at trial. Defendants also reserve their right to call rebuttal and/or impeachment witnesses, including any witnesses listed herein by plaintiff.

## **EXHIBITS**

Plaintiff's Exhibits						
Ex. #	Description	Authenticity	Admissibility	Objection	Admitted	
#1	Illustration of Plaintiff's Keynote Travel (demonstrative)	Disputed	Disputed	D. F, N, 602, 1006		
#2	John Cary LCP (demonstrative)	Disputed	Disputed	N, 802, 702, 703, 403		
#3	William Brandt's Economic Analysis (demonstrative)	Disputed	Disputed	N, 802, 702, 703, 403		

#4	Illustration of Mechanism of Event (demonstrative)	Disputed	Disputed	D, E, F, N, 402, 403, 602,	
#5	Photographs of Trips with Martin "Max" Randal (demonstrative)	Disputed	Disputed	D, N, 402, 403,	
#6	Illustration of Mechanism of Injury (demonstrative)	Disputed	Disputed	D, E, F, N, 402, 403, 602,	
#7	Illustration of Plaintiff's Family Tree (demonstrative)	Disputed	Disputed	D, N, 402, 403,	
#8	Photographs of Plaintiff from Mt. St. Helens, Sudan and Australia (demonstrative)	Disputed	Disputed	D, N, 402, 403,	
#9	Photograph of Plaintiff's TENS Unit (demonstrative)	Disputed	Disputed	D, N, 402, 403,	
#10	Photographs of Plaintiff's Family (demonstrative)	Disputed	Disputed	D, N, 402, 403,	
#11	YouTube Clips of Plaintiff's Keynotes Prior to and After Subject Collision ( <a href="https://www.youtube.com/watch?v=L6bL8WM6V9Y&amp;t=7s">https://www.youtube.com/watch?v=L6bL8WM6V9Y&amp;t=7s</a> ; <a href="https://www.youtube.com/watch?v=qBUC03U3Zqw&amp;t=13s">https://www.youtube.com/watch?v=qBUC03U3Zqw&amp;t=13s</a> ; <a href="https://www.youtube.com/watch?v=cT1IAbdJ5ys&amp;t=4s">https://www.youtube.com/watch?v=cT1IAbdJ5ys&amp;t=4s</a> )	Stipulated	Stipulated		

The Parties' Objection Code:

D	Not produced during discovery
E	Calls for expert testimony, no expert disclosed
F	Lack of foundation
N	Not disclosed in Plaintiff's initial Pretrial Statement

## B. Defendants' Exhibits

Defendants have not disclosed any exhibits and reserve the right to rely upon any admitted exhibits of Plaintiff at trial and to introduce exhibits for rebuttal and/or impeachment purposes, as appropriate.

## ACTION BY THE COURT

1           (a) This case is scheduled for trial without a jury on October 20, 2020 at 9:00 a.m.;

2           (b) Trial briefs shall be submitted to the Court on or before September 29, 2020;

3           (c) The Court shall review Plaintiff's deposition designation on September 29, 2020 of

4 Defendant Michelena with Defendants' objections and Plaintiff's counter-objections prior to trial

5 so Plaintiff may properly prepare Defendant Michelena's deposition video for trial.Defendants

6 object to Plaintiff's deposition designations being allowed as they are untimely and not in

7 compliance with the provisions of LCR 32.

9           (c) Defendants request, pursuant to LCR 43(j), that, before-at the Pre-Trial Conference,

10 the Court require Plaintiff to select one medical expert witness, either Dr. Michael Brage, or Dr.

11 Gary Schuster, to testify regarding Plaintiff's injuries and treatment arising from the subject

12 accident, permanency of her injuries, and her future treatment and prognosis.Plaintiff objects to

13 this request as the Court already ruled on Defendants' Motion In Limine regarding Plaintiff's use

14 of expert witnesses, in which the Court made clear such objections must be made at the time of

15 trial. -

17           Defendants' response: This is the eve of trial as it is less than 30 days away, and for judicial

18 efficiency it makes sense that the Court should order Plaintiff at the PreTrial Conference, to select

19 which of her the two medical experts, either Dr. Brage or Dr. Schuster, will testify regarding these

20 issues at trial so that the parties can appropriately prepare for trial. LCR 43(j) specifically requires

21 that the election be made and does not state that it must be made after the trial begins.

23           (e) Defendants request that the Court order that Defendants will have at least one (1)

24 hour to cross-examine Dr. Brage during his perpetuation deposition currently set for October 15,

25 2020 at 4:00 p.m. Plaintiff objects to this request. Defendants are attempting to turn a perpetuation

1 deposition into a discovery deposition, which they never completed during the course of discovery.  
2 Dr. Brage's perpetuation deposition is scheduled for two hours, which is more than sufficient for  
3 both parties to question him.

4 Defendants' response: Dr. Brage's perpetuation testimony is not a deposition, it is his trial  
5 testimony. Defendants have the right to question him for an appropriate period of time such that  
6 they can conduct a complete cross-examination of him. Defendants would have the opportunity  
7 to do so if Dr. Brage appeared at trial, so if Plaintiff is not willing to confirm that Defendants will  
8 have at least one hour to cross-examine Dr. Brage during his perpetuation deposition, then  
9 Defendants request that the Court order Dr. Brage to appear at trial during the stated trial October  
10 20-22, 2020 and provide his testimony via Zoom as all other witnesses will be appearing.

12 This order has been approved by the parties as evidenced by the signatures of their counsel.  
13 This order shall control the subsequent course of the action unless modified by a subsequent order.  
14 This order shall not be amended except by order of the court pursuant to agreement of their parties  
15 or to prevent manifest injustice.

17 DATED this \_\_\_\_\_ day of September 2020.

19 \_\_\_\_\_  
20 Hon. Benjamin H. Settle  
United States District Judge

22 FORM APPROVED.

24 \_\_\_\_\_  
25 Young-Ji Ham, WSBA # 46421  
Jenna M. Labourr, WSBA # 44555  
26 Attorneys for Plaintiff Allison Randal

1 Address:  
2 WASHINGTON INJURY LAWYERS, PLLC  
3 1700 7<sup>th</sup> Avenue, Suite 2100  
Seattle, WA 98101  
4 Phone: (425) 312-3057

5 FORM APPROVED.

7 *Shawn A. Toliver, pro hac vice*  
8 Shawn.Toliver@lewisbrisbois.com

9 Lewis Brisbois Bisgaard & Smith  
10 2185 N. California Blvd., Ste. 300  
Walnut Creek, CA 94596  
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14 Thomas J. Collins, WSBA # 2157  
15 tcollins@mhlseattle.com

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Seattle, WA 98121  
17 Telephone: (206) 682-0610  
Facsimile: (206) 467-2689

18 *Attorney for Defendants XPO Logistics, Inc. and Michael D. Michelena*

1                   **DECLARATION OF SERVICE**

2       The undersigned certifies under the penalty of perjury that on the date set forth below, I caused to  
3       be served a copy of the foregoing document on the following individuals in the manner indicated:

4                   Young-Ji Ham	( x )	Electronic service
5                   Jenna M. Labourr		via CM/ECF
6                   WASHINGTON INJURY LAWYERS, PLLC		
7                   1001 Fourth Avenue, Suite 3200		
8                   Seattle, WA 98154		
9                   youngji@washinjurylaw.com		
10                  jenna@washinjurylaw.com		
11 <i>Counsel for Plaintiff</i>		

12                  EXECUTED this 28th day of September, 2020, at Seattle, Washington.

13                  \_\_\_\_\_  
14                  *s/ Christopher A. Campbell*  
15                  Christopher A. Campbell, WSBA #50959

# *Exhibit C*



COURT REPORTING

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DEPOSITION AND TRIAL



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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ALLISON N. RANDAL, an  
individual,

Plaintiff,

vs.

No. 3:18-cv-6002 BHS

XPO LOGISTICS, INC., a Delaware  
corporation conducting business  
in the State of Washington,  
MICHAEL D. MICHALENA, an  
individual employed by XPO  
LOGISTICS, INC.; TILLAMOOK COUNTY  
CREAMERY ASSOCIATION, an Oregon  
corporation conducting business  
in the State of Washington; RAY  
A. NAEGELI, an individual  
employed by TILLAMOOK COUNTY  
CREAMERY ASSOCIATION; J. DOE  
corporations and/or entities 1-5;  
and DOE 1-5 individuals,

Defendants.

---

DEPOSITION OF

ALLISON N. RANDAL

TAKEN ON  
THURSDAY, JUNE 27, 2019  
11:10 A.M.

MERRICK HOFSTEDT AND LINDSEY, PS  
3101 WESTERN AVENUE, SUITE 200  
SEATTLE, WASHINGTON 98121

**APPEARANCES**

**On behalf of the Plaintiff:**

YOUNG-JI HAM, ESQUIRE

**WASHINGTON INJURY LAWYERS, PLLC**

1001 4th Avenue, Suite 3200

Seattle, Washington 98154

(425) 312-3057

youngji@washinjurylaw.com

**On behalf of the Defendants, XPO Logistics**

**and Michael D. Michelena:**

THOMAS J. COLLINS, ESQUIRE

**MERRICK HOFSTEDT AND LINDSEY, PS**

3101 Western Avenue, Suite 200

Seattle, Washington 98121

(206) 682-0610

Tcollins@mhlseattle.com

**APPEARANCES CONTINUED**

On behalf of Defendants, Tillamook County Creamery

**Association and Ray A. Naegeli:**

DAVID LE TRAN, ESQUIRE

SHAWN BUTLER, ESQUIRE

**HELSELL FETTERMAN LLP**

1001 4th Avenue, Suite 4200

Seattle, Washington 98154

(206) 292-1144

Dtran@helsell.com

Sbutler@helsell.com

## 1 DEPOSITION OF

2 ALLISON N. RANDAL

3 TAKEN ON

4 THURSDAY, JUNE 27, 2019

5 11:10 A.M.

6  
7 Thereupon, the following proceedings began at  
8 11:10 a.m.:9 **THE STENOGRAPHER:** Raise your right hand, please.10 Do you solemnly swear or affirm the testimony you  
11 are about to give in this matter will be the truth, the  
12 whole truth and nothing but the truth?13 **THE WITNESS:** Yes, I do. Thereupon,  
14 **ALLISON RANDAL**, having been first duly sworn or affirmed,  
15 was examined and testified as follows:

## 16 DIRECT EXAMINATION

17 BY MR. COLLINS:

18 Q Good morning. My name is Tom Collins, and I want  
19 to apologize for the delay in getting started. There was a  
20 mess up here in getting our court reporter, but we're all  
21 set now, and we can proceed.22 This deposition is taken under the Federal Rules  
23 of Civil Rules of Procedure, and we will be asking you  
24 questions about this incident, the accident that happened,  
25 your injuries and follow-up treatment. If you need to take

1 A Technically, no.

2 Q What was the status? How would you describe it?

3 A I'm under NDA. I can't talk about the deal or  
4 anything that happened as part of the deal. I was not  
5 fired.

6 Q So a Nondisclosure Agreement -- and you can talk  
7 with your attorney if you need to. A Nondisclosure  
8 Agreement does not prevent you from answering under oath in  
9 a deposition, which is under the purview of the court. So I  
10 would ask you to say why you -- how would you describe your  
11 terminatio or your let go or your status when you departed  
12 SUSE?

13 MS. HAM: She can answer, but she's not making any  
14 sort of lost wage or loss of earning capacity claim, so I  
15 would say none of this is relevant.

16 MR. BUTLER: Well, you know what, so we don't put  
17 everybody in a pickle, why don't we just go through that.

18 BY MR. BUTLER:

19 Q You're not making any claim for lost wages in this  
20 case?

21 A I am not.

22 Q You're not making any claim for loss future  
23 earning capacity in this case?

24 A I am not, no.

25 Q There we go. I apologize I have to ask you about

CERTIFICATE OF OATH

THE STATE OF FLORIDA )

COUNTY OF DUVAL )

I, the undersigned authority, certify that ALLISON RANDAL personally appeared before me and was duly sworn on the 27th day of June, 2019.

Signed this 5th day of July, 2019.

  
LORA LEE KNORR-FIERRO, RPR, FPR  
Notary Public - State of Florida  
My Commission No. GG303687  
My Commission Expires: 04/30/2023



CERTIFICATE OF REPORTER

THE STATE OF FLORIDA )

COUNTY OF DUVAL )

I, LORA LEE KNORR-FIERRO, Registered Professional Reporter and Florida Professional Reporter, certify that I was authorized to and did stenographically report the foregoing deposition of ALLISON RANDAL, pages 1 through 119; that a review of the transcript was not requested; and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED this 5th day of July, 2019.



LORA LEE KNORR-FIERRO, RPR, FPR

# *Exhibit D*

October 1<sup>st</sup>, 2019

## UW Medicine

UW SCHOOL  
OF MEDICINE

### RE: Allison Randal Narrative Report

Dear Young-Ji Ham,

My name is Dr. Michael Brage and I am an Orthopaedic Foot and Ankle Surgeon at Harborview Medical Center. I have not authored any publications in the last 4 years and have not testified at trial or deposition as an expert in the last 4 years.

I am providing a summary of my medical treatment for your client Allison Randal. I would like to state again that I am not an expert witness. I am simply a treating physician that is providing a summary of my care. I can also provide some ideas regarding future medical treatment.

Allison Randal presented to Harborview Medical Center on December 23<sup>rd</sup>, 2015. She had sustained an open left calcaneus fracture. She was 43 at the time and was rear ended at low speeds by a semi-truck according to the medical record. She sustained an open left calcaneus fracture and was admitted to the medical center for treatment. Her exam and her x-ray studies showed a severe intra-articular fracture of the left calcaneus displace which was open. She was close reduced and splinted in preparation for surgery. Her surgery was performed on December 24<sup>th</sup> by Dr. David Barei. He is an Orthopaedic Traumatologist here and performed a closed-reduction with k-wire fixation and an implementation of an external fixator.

I first consulted on this patient December 1<sup>st</sup>, 2015. She had been discharged from the hospital and I saw her in our orthopaedic foot and ankle clinic. She was compliant. Her external fixation device was intact and her wounds were healing well. We discussed operative repair of her injury. She agreed and consented. On January 4<sup>th</sup>, 2016, she underwent an open reduction and internal fixation of her calcaneus fracture. We also removed her external fixator. The surgery went well.

We next saw the patient on January 21<sup>st</sup>, 2016. She was 2 weeks from her surgery. Our clinic notes say she was doing well and was off pain medication. Her wounds were healing without issue. We took out her sutures and she maintained a non-weightbearing status for 4 more weeks.

Our next visit was February 18<sup>th</sup>, 2016. Her fracture was healing well. She had a 2 out of 10 pain in her foot and ankle. We began protected weight-bearing physical therapy.

We next saw Allison in clinic on April 1<sup>st</sup>, 2016. She was progressing nicely, increasing her weight-bearing on her limb and attending physical therapy. Her course was healing as expected and we continued physical therapy to maximize her gait, balance, strength and proprioception. We began weaning her out of a boot-like device into a shoe.

#### Howard A. Chansky, M.D.

Professor and Chair  
UW Medicine

Team Physicians to the  
University of Washington Huskies

#### Orthopaedic Faculty

##### Harborview Medical Center

David Barei, M.D.  
Carlo Bellabarba, M.D.  
Daphne M. Beingessner, M.D.  
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Michael E. Brage, M.D.  
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Suzanne M. Yandow, M.D.

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I was provided a disk of medical information on this patient. My main interest was to see if there were any actual radiographs on it. There were no radiographs on the disk. I did not read any of the physical therapy notes or further medical treatment that she has done with future providers.

Allison Randal will likely need future medical care. It is more likely than not that she will develop arthritis in her ankle and hindfoot with time.

Allison Randal will likely need medications for arthritis such as non-steroidal anti-inflammatories. It is common that she may need intra-articular injections in either her subtalar joint or ankle as part of pain relief treatments for arthritis. Should the arthritis progress to a point where non-surgical care is not relieving her pain in a satisfactory manner and her quality of life is being interfered with, she may require surgery. For the subtalar joint, a subtalar arthrodesis is performed for intractable pain following trauma. This involved removing the remaining cartilage, bolting it together with screws and allowing the calcaneus and talus bone to heal together. Thus, eliminating the joint and relieving her symptoms.

Should that surgery be performed, it is also well-known that, over time, that the ankle joint will begin some arthritic change and that can continue for decades. As in her subtalar joint, she may require non-steroidal anti-inflammatories, bracing, injections and then surgery for her ankle. Ankle surgery for arthritic conditions either involve ankle arthrodesis or total ankle replacement.

My opinions on the patient are my opinions alone and are based on my clinic experience of treating patients with this condition. Please contact my office if any further information is required.

Sincerely,



Michael E. Brage, MD  
Associate Professor  
Orthopaedics and Sports Medicine  
University of Washington  
Harborview Medical Center

# *Exhibit E*

**EXHIBIT 01**  
**Michael E. Brage MD - Documents**

October 1<sup>st</sup>, 2019

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UW SCHOOL  
OF MEDICINE

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My opinions on the patient are my opinions alone and are based on my clinic experience of treating patients with this condition. Please contact my office if any further information is required.

Sincerely,



Michael E. Brage, MD  
Associate Professor  
Orthopaedics and Sports Medicine  
University of Washington  
Harborview Medical Center

# *Exhibit F*

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

---

MARY WHITTENBERG, a single )  
person, )  
Plaintiff, )  
vs. ) No. 16-2-29490-1 KNT  
LIVE NATION WORLDWIDE, )  
INC., a corporation; )  
LEGENDS MUSIC, LLC, a )  
limited liability company; )  
LEGENDS HOSPITALITY, LLC, a )  
limited liability company, )  
Defendants. )

---

DEPOSITION UPON ORAL EXAMINATION OF

GARY R. SCHUSTER, M.D.

---

Taken at 1600 116th Avenue NE

Bellevue, Washington

DATE TAKEN: OCTOBER 5, 2017

REPORTED BY: JOLENE C. HANECA, RPR, CCR #2741

1 APP E A R A N C E S

2

3 ATTORNEY FOR THE PLAINTIFF:

4 JOHN H. O'ROURKE  
5 Law Office of John O'Rourke  
6 2101 Fourth Avenue  
7 Suite 2200  
8 Seattle, Washington 98121  
9 206.824.2802  
10 johnhorourke@comcast.net

11

12 ATTORNEY FOR THE DEFENDANTS:

13 DAVID S. COTTN AIR  
14 Merrick Hofstedt & Lindsey  
15 3101 Western Avenue  
16 Suite 200  
17 Seattle, Washington 98121  
18 206.682.0610  
19 dcottnair@mhlseattle.com

20 \* \* \* \* \*

21

22

23

24

25

1 BELLEVUE, WASHINGTON, OCTOBER 5, 2017

2 3:50 P.M.

3 --000--

4

5 GARY R. SCHUSTER, M.D., witness herein, having been  
6 first duly sworn on oath,  
7 was examined and testified  
8 as follows:

9

10 EXAMINATION

11 BY MR. COTTNAIL:

12 Q. Good afternoon, Doctor. Could you state your  
13 name and business address for the record?

14 A. Sure. It's Gary Schuster; 1600 116th Avenue  
15 NE, Bellevue.

16 Q. And you are familiar with the deposition  
17 process, correct?

18 A. I am.

19 Q. Are you able to tell me how many times,  
20 approximately, you've been deposed in a forensic capacity  
21 where you have done an IME versus when you have treated  
22 someone on multiple occasions?

23 A. I probably couldn't. I mean, I get probably a  
24 couple depositions a month. So I've been doing it  
25 forever, so many years.

1 Q. And can you estimate for me at all what  
2 percentage of your time nowadays, say within the last  
3 year, is the ongoing active practice versus IME practice?

4           A.     It's probably 3 to 5 percent of my time is  
5     doing IMEs. So I would say 90 -- well, so I see 15, 20,  
6     probably 20 patients a day, in that range. I might do  
7     zero to five IMEs a week. So I have a hundred patients.  
8     That's where I get that percentage.

9           Q.     Okay. And your practice, your normal practice  
10          or active practice, versus IME practice, can I try and  
11          divide them like that?

12 A. Sure. So about half is orthopedic, physical  
13 rehab medicine, and the other half -- I'm not a surgeon,  
14 but it's more physiatry, and the other 50 percent is  
15 internal medicine, general internal medicine.

16 Q. And I see you have records in front of you.  
17 Can you describe what those are?

18           A.     Sure. These were provided -- these are some  
19       of, all of the records received, I believe. I don't have  
20       any disks on this patient. And so they've been all  
21       summarized in my narrative to you, so. Or not to you,  
22       but the narrative that you see.

23 Q. Right.

24 A. And then it would include the reports of King  
25 County Ambulance Services, St. Elizabeth Hospital, or

# *Exhibit G*

## **The Honorable Judge Benjamin H. Settle**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ALLISON N. RANDAL, an individual, ) NO. 3:18-cv-6002 BHS

Plaintiff, ) **PRETRIAL ORDER**

V.

*TRIAL DATE: OCTOBER 20, 2020*

XPO LOGISTICS, INC., a Delaware corporation conducting business in the State of Washington; MICHAEL D. MICHELENA, an individual employed by XPO LOGISTICS, INC.; **TILLAMOOK COUNTY CREAMERY ASSOCIATION**, an Oregon corporation conducting business in the State of Washington; RAY A. NAEGELE, an individual employed by **TILLAMOOK COUNTY CREAMERY ASSOCIATION**; J. DOE CORPORATIONS AND/OR ENTITIES 1-5; and DOE 1-5, individuals,

Defendants.)

## **JURISDICTION**

~~Jurisdiction is vested in this court by virtue of:~~ Pursuant to 28 U.S.C. §1332(a)(1), this

Court has diversity jurisdiction because Plaintiff does not share a state of citizenship with the Defendants. This Court also has jurisdiction based on the amount in controversy, which exceeds \$75,000. Venue is proper in the Western District of Washington, pursuant to 28 U.S.C. §1331(b)(2) and (c)(2), because a substantial part of the events or omission giving rise to the claims herein occurred in Lewis County and Defendants are subject to this Court's personal jurisdiction.

PRETRIAL ORDER- 1  
NO. 3:18-cv-6002 BHS

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1 with respect to the civil action in question.

2

**CLAIMS AND DEFENSES**

3 The Plaintiff will pursue at trial the following claims: -Personal injury claims against  
4 Defendants for her ongoing injuries, primarily to her left heel.- Plaintiff is seeking non-economic  
5 and economic damages for her injuries, including emotional distress, past and future loss of  
6 earning capacity. and, life care plan costs. and future medical expenses and treatment. Defendants  
7 have admitted liability for the subject crash. Defendants further admit causing the injuries and  
8 damages proximately caused by the subject crash.

9

10 Defendants will pursue the following defenses: Defendants contest the nature and extent  
11 of Plaintiff's injuries and damages.- Defendants also assert that Plaintiff failed to mitigate her  
12 alleged economic damages for lost wages and loss of earning capacity.

13

**ADMITTED FACTS**

14

15 The following facts are admitted by the parties:

16 1. Plaintiff is female, 45~~-~~years~~-~~old, and currently resides in New York.

17 2. XPO Logistics, Inc., is a corporation headquartered in Delaware that does business  
18 in Washington state and throughout the ~~country~~United States.

19 3. On or about December 23, 2015, at approximately 10:25 a.m., Plaintiff was driving  
20 southbound on I-5, near mile marker 84, in Centralia Lewis County, Washington.

21 4. Defendant Michael Michelena ("Michelena") was driving a tractor trailer in the  
22 same lane, two vehicles behind Plaintiff.

23 5. Defendant Michelena's truck rear-ended a truck behind Plaintiff's vehicle, thereby  
24 causing the subject collision.

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6. Defendant Michelena was working on behalf of XPO Logistics, Inc. at the time of the crash.

7. Defendants admit liability for the subject crash.

8. Defendants admit causing the injuries and damages proximately caused by the subject crash.

9. Defendants contest the nature and extent of Plaintiff's injuries and damages.

10. Defendants have asserted no affirmative defenses. (Defendants object to this “fact.”)

## **ISSUES OF LAW AND FACT**

A. Plaintiff proposes the following issues of fact:

1 What amount of non-economic damages is Plaintiff entitled to due to her crash-related injuries?

2. What amount of economic damages is Plaintiff entitled to due to her crash-related injuries?

Plaintiff states that there are no issues of law before the Court. (Defendants dispute this statement as Defendants' motions in limine have been denied, without prejudice to Defendants' renewing them at trial.)

B. Defendants propose the following statement of issues of fact:

a. Is the future medical treatment proposed for Plaintiff's left heel injury a medical necessity?

b. What is the amount of reasonable non-economic damages to which Plaintiff is entitled, if any?

1           c.     What is the extent of Plaintiff's past lost wage claim and whether Plaintiff will lose  
2 any future income because of this injury?

3           d.     What is the extent of Plaintiff's lost earning capacity because of this injury?

4           Defendants seek to have the following issues of law adjudicated by the Court:

5           1.     Defendants' motions in limine were preliminarily denied by the Court without  
6 prejudice to Defendants renewing them at time of trial. Defendants are not waiving their right to  
7 reassert their motions in limine.

8

**EXPERT WITNESSES**

9

10          (a)    Defendants request, pursuant to LCR 43(j), that Plaintiff be limited to one medical  
11 expert witness, either Dr. Michael Brage, or Dr. Gary Schuster, to testify regarding Plaintiff's  
12 injuries and treatment arising from the subject accident, permanency of her injuries, and her future  
13 treatment and prognosis.

14

15          (b)    The name(s) and addresses of the expert witness(es) to be used by each party at the  
16 trial and the issue upon which each will testify is:

17           (1)    On behalf of plaintiff:

18           (i)    Michael E. Brage, MD (will testify via perpetuation deposition), Orthopedic Foot  
19 and Ankle Surgeon, Sigvard T. Hansen Foot and Ankle Institute, Harborview Medical Center, 325  
20 Ninth Avenue, Box 359798, Seattle, Washington 98104-2499, Phone: (206) 744-5707. Dr. Brage  
21 treated Plaintiff following her subject collision at Harborview Medical Center and performed two  
22 surgeries on her left calcaneus and has treated her for ongoing pain complaints. Dr. Brage will  
23 testify to Plaintiff's injuries and their permanency, the past treatment he rendered, and provide  
24 opinions on future treatment and prognosis, on a more probable than not basis. Dr. Brage is  
25

1 Plaintiff's treating provider but is a hybrid expert who is also providing opinions on future care  
2 and treatment on a more probable than not basis. Dr. Brage, therefore, is also being designated as  
3 an expert witness, pursuant to FRCP 26(2)(B).

4 (ii) Gary Schuster, MD (will testify live or via Zoom, unless the Court orders otherwise,  
5 in light of COVID-19 and Emergency Orders in effect at the time of trial?), Broadway Sports &  
6 Internal Medicine, 1600 116th Avenue Northeast, Suite 202, Bellevue, WA 98004. Dr. Schuster  
7 is a forensic medical expert and will testify to Plaintiff's injuries and treatment arising from the  
8 subject collision, permanency of injuries, future treatment and prognosis, permanent physical  
9 restrictions, the effect of injuries on ability to work, and Plaintiff's life care plan on a more  
10 probable than not basis.

11 (iii) John R. Cary, MA, CRC, CDMS, VRC (will testify via Zoom, unless the Court  
12 orders otherwise, in light of COVID-19 and Emergency Orders in effect at the time of triallive or  
13 via zoom?), OSC Vocational Systems, Inc., 601 SW 152nd Street, Burien, WA 98166. Mr. Cary  
14 will testify to his opinions regarding Plaintiff's life care plan and past and future reduced earning  
15 capacity on a more probable than not basis.

16 (iv) William Brandt (will testify via Zoom, unless the Court orders otherwise, in light  
17 of COVID-19 and Emergency Orders in effect at the time of trial, live or via zoom?), Brandt  
18 Forensic Economics, PO Box 10187, Bainbridge Island, WA 98110. Mr. Brandt will testify to his  
19 opinions regarding Plaintiff's economic losses in present-day value, specifically Plaintiff's life  
20 care plan, future medical costs and treatment, and past and future reduced earning capacity, on a  
21 more probable than not basis.

22 (2) On behalf of defendants:

23  
24  
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(i) Defendants will not be calling any of their own expert witnesses. Defendants are not waiving their right to re-assert the objections contained in their motions in limine regarding Plaintiff's expert witnesses, which motions the Court previously denied, but without prejudice to Defendants' right to make the same objections contained in the motions in limine at trial.

## **OTHER WITNESSES**

The names and addresses of witnesses, other than experts, to be used by each party at the time of trial and the general nature of the testimony of each are:

(a) On behalf of plaintiff:

(i) Allison N. Randal (will testify via Zoom, unless the Court orders otherwise, in light of COVID-19 and Emergency Orders in effect at the time of trial live or via zoom), c/o Washington Injury Lawyers, PLLC. Ms. Randal is the Plaintiff and will testify regarding the subject collision, her injuries, and damages, including but not limited to damage to her professional career, her relationships, and her ongoing physical and emotional pain and suffering.

(ii) Michael D. Michelena (via video deposition testimony in lieu of live testimony), c/o Merrick, Hofstedt & Lindsey, P.S., and Lewis Brisbois Bisgaard & Smith, LLP. Mr. Michelena is the Defendant Driver and was working on behalf of Defendant XPO Logistics, Inc. at the time of the subject crash. He/His deposition transcript will be admitted in lieu of live testimony, which will discuss the subject collision and the surrounding circumstances~~may be called to testify regarding the subject collision and the surrounding circumstances.~~

(iii) Martin "Max" Randal (will testify via Zoom, unless the Court orders otherwise, in light of COVID-19 and Emergency Orders in effect at the time of trial), live or via live video?);  
10609 171st Ct NE, Redmond, WA 98052. Mr. Martin "Max" Randal is Plaintiff's son. He was

1       the Ms. Randal's front-seat passenger in the subject collision. He may be called to testify regarding  
2       the subject crash, Plaintiff's physical and emotional condition before the subject crash, Plaintiff's  
3       injuries and damages arising from the subject crash, as well as how the injuries and damages  
4       continue to affect her life and their relationship.

5                     (iv)      Jeffrey Martin (will testify via Zoom, unless the Court orders otherwise, in light of  
6       COVID-19 and Emergency Orders in effect at the time of trial<sup>live or via zoom?</sup>, 2208 16<sup>th</sup> Ave  
7       S. Seattle, Washington. Mr. Jeffrey Martin is Plaintiff's brother. He may be called to testify  
8       regarding Plaintiff's physical and emotional condition before the subject crash, Plaintiff's injuries  
9       and damages arising from the subject crash, as well as how the injuries and damages continue to  
10      affect her life.

12                   (v)      Stefano Rivera (will testify via Zoom, unless the Court orders otherwise, in light of  
13       COVID-19 and Emergency Orders in effect at the time of trial<sup>live or via live video?</sup>, 40 Alta St.,  
14       Apt. 3, San Francisco, CA 94133-3527. Mr. Stefano Rivera was Plaintiff's boyfriend at the time  
15       of the subject crash. He may be called to testify regarding his Plaintiff's physical and emotional  
16       condition before the subject crash, Plaintiff's injuries and damages arising from the subject crash,  
17       how their relationship was affected due to the crash, how Plaintiff's injuries and damages arising  
18       from the subject crash affected her professional career, as well as how the injuries and damages  
19       continue to affect her life.

21                   (vi)     Matthew Treinish (will testify via Zoom, unless the Court orders otherwise, in light  
22       of COVID-19 and Emergency Orders in effect at the time of trial<sup>live or via live video?</sup>, 14  
23       Dartantra Drive, Hopewell Junction, New York 12533. Mr. Matthew Treinish is Plaintiff's  
24       boyfriend and currently resides with her. He may be called to testify regarding his knowledge of

1 Plaintiff's injuries and damages, as well as how the injuries and damages affect her life.

2 (vii) Michael E. Brage, MD (will testify by perpetuation deposition), Orthopedic Foot  
3 and Ankle Surgeon, Sigvard T. Hansen Foot and Ankle Institute, Harborview Medical Center, 325  
4 Ninth Avenue, Box 359798, Seattle, Washington 98104-2499. Dr. Brage treated Plaintiff  
5 following her subject collision at Harborview Medical Center and performed two surgeries on her  
6 left calcaneus and has treated her for ongoing pain complaints. Dr. Brage will testify to Plaintiff's  
7 injuries and their permanency, the past treatment he rendered, and provide opinions on future  
8 treatment and prognosis, on a more probable than not basis.

9  
10 (b) On behalf of defendantsDefendants:

11 (i) Defendants will not be calling any of their own lay witnesses.- Defendants are not  
12 waiving their right to re-assert the objections contained in their motions in limine regarding  
13 plaintiff's lay witnesses, which motions the Court previously denied, but without prejudice to  
14 Defendants' right to make the same objections contained in the motions in limine at trial.  
15 Defendants also reserve their right to call rebuttal and/or impeachment witnesses, including any  
16 witnesses listed herein by plaintiff.

17  
18 **EXHIBITS**

19 ————— Neither Plaintiff nor Defendant intend to offer any exhibits at trial.

20 Defendants reserve the right to offer rebuttal and/or impeachment exhibits, if appropriate.

21 **A. Plaintiff's Exhibits.**

Exhibit #	Description
1	<a href="#">Illustration of Plaintiff's Keynote Travel (demonstrative)</a>
2	<a href="#">John Cary LCP (demonstrative)</a>
3	<a href="#">William Brandt's Economic Analysis (demonstrative)</a>
4	<a href="#">Illustration of Mechanism of Event (demonstrative)</a>
5	<a href="#">Photographs of Trips with Martin "Max" Randal (demonstrative)</a>
6	<a href="#">Illustration of Mechanism of Injury (demonstrative)</a>
7	<a href="#">Illustration of Plaintiff's Family Tree (demonstrative)</a>
8	<a href="#">Photographs of Plaintiff from Mt. St. Helens, Sudan, and Australia (demonstrative)</a>
9	<a href="#">Photograph of Plaintiff's TENS Unit (demonstrative)</a>

1	<a href="#">10 Photographs of Plaintiff's Family (demonstratives)</a>
2	<a href="#">11 YouTube Clips of Plaintiff's Keynotes Prior to and After Subject Collision</a> <a href="https://www.youtube.com/watch?v=L6bL8WM6V9Y&amp;t=7s">https://www.youtube.com/watch?v=L6bL8WM6V9Y&amp;t=7s</a> ; <a href="https://www.youtube.com/watch?v=qBUC03U3Zqw&amp;t=13s">https://www.youtube.com/watch?v=qBUC03U3Zqw&amp;t=13s</a> ; <a href="https://www.youtube.com/watch?v=cT1IAbdJ5ys&amp;t=4s">https://www.youtube.com/watch?v=cT1IAbdJ5ys&amp;t=4s</a>

4 **B. Defendants' Exhibits**

5 Defendants have not disclosed any exhibits and reserve the right to rely upon any admitted  
6 exhibits of Plaintiff at trial.

7 **DEPOSITION TRANSCRIPTS**

8 **A. Plaintiff's Deposition Transcripts**

WITNESS	PAGES	DATE
Michael D. Michelena	<a href="#">5:4 - 10;</a> <a href="#">6:9 - 20;</a> <a href="#">8:19 - 21;</a> <a href="#">13:20 - 25;</a> <a href="#">14:1 - 6;</a> <a href="#">15:24 - 25;</a> <a href="#">16:1 - 7;</a> <a href="#">18:5 - 19;</a> <a href="#">66:9 - 15;</a> <a href="#">88:14 - 19;</a> <a href="#">89:15 - 25;</a> <a href="#">90:1 - 11;</a> <a href="#">95:3 - 25;</a> <a href="#">96:1 - 25;</a> <a href="#">97:1 - 5;</a> <a href="#">98:20 - 25;</a> <a href="#">99:1 - 3:9 - 13;</a> <a href="#">104:7 - 18;</a> <a href="#">111:19 - 25;</a> <a href="#">112:1 - 11:19 - 25;</a> <a href="#">113:1 - 25;</a> <a href="#">114:1 - 25;</a> <a href="#">115:1 - 25;</a> <a href="#">116:1 - 6;</a> <a href="#">119:7 - 20;</a> <a href="#">128:5 - 9:19 - 20;</a> <a href="#">130:8 - 10:13 - 15;</a> <a href="#">131:6 - 8;</a> <a href="#">132:7 - 20;</a> <a href="#">133:1 - 3;</a> <a href="#">141:8 - 15:20 - 24;</a> <a href="#">149:4 - 13;</a>	<a href="#">January 21, 2020</a>

1                   150:1 - 6:18 - 25;  
2                   151:1,:10 - 12:17 - 24;  
3                   152:23 - 25;  
4                   153:1 - 2;  
5                   169:2 - 17;  
6                   170:8 - 11;  
7                   173:24;  
8                   174:15 - 23;  
9                   186:23 - 25;  
10                  187:1 - 5:10 - 17.

7                  **B. Defendants' Deposition Transcripts**

8                  Defendants have not disclosed any deposition transcripts and reserve the right to rely upon  
9                  any admitted deposition transcripts of Plaintiff at trial. Defendants contest Plaintiff's proposed  
10                 deposition transcripts.

11                  ► **Formatted:** Indent: First line: 0", Widow/Orphan control

13                  **ACTION BY THE COURT**

- 14                 (a) This case is scheduled for trial without a jury on October 20, 2020 at 9:00 a.m.  
15                 (b) Trial briefs shall be submitted to the Court on or before September 29, 2020.  
16                 (c) The Court shall review Plaintiff's deposition designation on September 29, 2020 of  
17                  Defendant Michelena with Defendants' objections and Plaintiff's counter-objections prior to trial  
18                  so Plaintiff may properly prepare Defendant Michelena's deposition video for trial.

19                 (e) Defendants request, pursuant to LCR 43(j), that, before the Pre-Trial Conference,  
20                  the Court require Plaintiff to select one medical expert witness, either Dr. Michael Brage, or Dr.  
21                  Gary Schuster, to testify regarding Plaintiff's injuries and treatment arising from the subject  
22                  accident, permanency of her injuries, and her future treatment and prognosis.

23                  This order has been approved by the parties as evidenced by the signatures of their counsel.  
24                  This order shall control the subsequent course of the action unless modified by a subsequent order.

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26                  PRETRIAL ORDER- 10  
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Commented [YH1]: The Court has already ruled on this in  
Defendants's MIL and advised Defendants to make their objection at  
the time of trial, if necessary.

1 This order shall not be amended except by order of the court pursuant to agreement of their parties  
2 or to prevent manifest injustice.

3 DATED this \_\_\_\_ day of September 2020.  
4

5 \_\_\_\_\_  
6 Hon. Benjamin H. Settle  
7 United States District Judge

8 FORM APPROVED.  
9

10 \_\_\_\_\_  
11 Young-Ji Ham, WSBA # 46421  
12 Jenna M. Labourr, WSBA # 44555  
13 Attorneys for Plaintiff Allison Randal

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14 Address:  
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Phone: (425) 312-3057

**Formatted:** Superscript

21 PRETRIAL ORDER- 11  
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14

15 *Attorney for Defendants XPO Logistics, Inc. and Michael D. Michelena*

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